Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 79-1196

In the Supreme Court of the United States

OCTOBER TERM, 1979

ANNIE MARY TIMMONS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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We invite the Court's attention to the following facts which indicate that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals was entered on September 17, 1979 (Pet. App. 33), and an order of the court of appeals denying a petition for rehearing was entered on October 17, 1979 (Pet. 2; Pet. App. 32). No extension of time for filing of a petition for a writ of certiorari was obtained. The 90-day period specified by 28 U.S.C. 2101(c) for seeking certiorari in civil cases therefore expired on January 15, 1980. However, the petition for a writ of certiorari was not filed until January 17, 1980.

Since the time limit specified by 28 U.S.C. 2101(c) is jurisdictional, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

MARCH 1980

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